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Interviewing sexually abused children

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OPSOMMING

Onderhoudvoering met kinders wat seksueel misbruik is

In hierdie artikel word die belang van behoorlike onderhoudvoering met die slagoffer van kinderseksuele-mishandeling beklemtoon. Die geheime aard van die misdaad en die kind se beperkte verbale vermoë impakteer op die geloofwaardigheid van die kindergetuie. Behoorlike voorbereiding vir en voering van die onderhoud is onontbeerlik vir 'n suksesvolle vervolging van die beskuldigde. Die beskuldigde geniet egter eweneens bepaalde regte tydens die onder-vragingsproses en hierdie feit bemoeilik die vervolging se taak om op 'n juries-verantwoordbare wyse tot 'n skuldigbevinding te kom, aansienlik.

1 Introduction

Studies¹ and the media² reveal an increase in the incidence of child sexual abuse.³ Professionals who deal with children agree that child sexual abuse is a unique problem since the manner in which it occurs makes it extremely difficult to detect. The secret nature of the offence, the child's youth and lack of verbal skills usually affect his or her credibility as a witness. Lack of training among professionals who interview the alleged victims exacerbate the problem.⁴ Other issues of concern are that the

1 Scott *The role child sexual abuse can play in girls' involvement in prostitution* Master's dissertation, University of Pretoria 2001; Ndlovu "Comfort and Support for Victims and Police" 2002 *Children First* 36; Geldenhuys "Child sexual abuse – A circle of hell" 2003 *Servamus* 38; Davis and Saffy "Young Witnesses: Experience of Court Support and Court Preparation Officials" 2004 *Acta Criminologica* 17.

2 Altenrolex "Lenient Treatment for Child Abuse Offenders" *Pretoria News* (1997-04-10) 7; SAPA "Baby Tshepang Raped by Only One Person" *Pretoria News* (2001-01-21) 1.

3 The Child Justice Bill 2002 defines sexual abuse as sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted. It also includes encouraging, or inducing the child to be used for the sexual gratification of another person. A child in terms of the Bill means a person under the age of 18 years. The Criminal Law (Sexual Offences) Amendment Bill GG 25282 of 2003-07-03 criminalises three offences that are characterised by acts of sexual penetration, namely, rape, sexual violation, and oral genital violation.

4 Schedule 1 of the Criminal Law (Sexual Offences) Amendment Bill advocates the proper and continuous training of all professionals and other role players. These professionals have to undergo a thorough selection and screening process.

child, however young, is expected to tell his or her embarrassing tale in open court like an adult. Even if the child is induced to tell his or her story to the court, there is usually no conviction on the child's evidence without corroboration.

The legal decisions concerning the validity of sexual abuse allegations are based upon two interrelated factors apart from physical evidence, namely, the quality and credibility of the child's statements and the reliability of the investigatory interview(s) which elicited those statements. Communication problems could also exist during interviews. Often the child's interview is the single most important component for determining whether or not the abuse occurred. The importance of interviews in child sexual abuse cases can therefore not be over emphasised. The South African Law Commission⁵ has expressed the same sentiment. It recommended that:

"Resources should be allocated to improving basic skills such as effectiveness of specialist interview procedures, general interviewing skills, innovative questioning techniques rather than to video technology when basic skills still need to be developed or improved upon."

In what is to follow, the preparation for and conducting of a proper child interview will be addressed. Thereafter the corroboration of the child's evidence and the possible obtaining of an admission from the alleged perpetrator will be discussed. This will be followed by an explanation of the alleged perpetrator's rights which is very important during the entire criminal justice process. The contribution will be concluded with particular recommendations.

2 Preparing for the Interview

Interviewers working with sexually abused children conduct investigative interviews⁶ to elicit statements about the alleged offence, to discover the truth and to institute possible criminal proceedings against the alleged offender.

There are no guidelines⁷ about how much information an interviewer must gather before meeting the child. There are, however, two basic approaches. The first approach supports the view that the interviewer should know as little as possible about the alleged victim and his or her

5 Project 107 Sexual Offences Report (Dec 2002) par 4, hereafter referred to as "ALC Dec 2002"; Camerer "Victims and Criminal Justice. Policing the Transformation: Further Issues in South Africa's Crime Debate" 1997 *ISS Monograph Series* 28.

6 Investigative interviews are also referred to as forensic interviews and are used to discover the truth. Procedures are governed by the courts and supported by research. The interviewer is neutral; he/she guides the interview but gives no feedback that might guide the child. The forensic/investigative interview is unique in that it requires alternative explanations and the way in which information is obtained is strictly governed. See Samuel and Starks *Child Interviewing: Common Causes of Communication Problems* 2002 15; Müller "Clinical and Forensic Interviews and the Child Witness" 2001 *Child Abuse Research in South Africa* 8.

7 Poole and Lamb *Investigative Interviews of Children: A Guide for Helping Professionals* (1998) 112.

history.⁸ This procedure is meant to reduce the temptation on the part of the interviewer of asking questions to confirm the allegations. The second approach is critical of the first. It emphasises the need for proper preparation. Its proponents argue that where “blind interviews” are held, the interviewer has no specific information to refer to when introducing the topic of abuse.⁹ Moreover, if the child fails to respond to prompts such as “Do you know why you are here?”, the interviewer will be unable to refer to other factors such as the location or time of the abuse to frame other prompts. Some professionals¹⁰ prefer the second approach. They are of the view that interviewers should gather as much information as possible about the allegations and familiarise themselves with topics that might assist them in building rapport.

3 Phases of the Interview

The questioning phase of the interview causes problems for both the interviewer and the interviewee.¹¹ Investigative interviews belie children’s beliefs about conversations. Children usually believe that adults know everything and therefore it is their prerogative, and not that of adults, to ask questions.¹² Very young children often assume that because one adult, the perpetrator, knows what took place, other adults must already know.¹³ Difficulties are also caused by poor questioning strategies, such as over reliance on leading questions and lack of sensitivity towards the child’s developmental maturity. Although there is no uniformly accepted manner of categorising questions,¹⁴ interviews should consist of at least four phases.

3.1 Phase One: Rapport Building

The rapport building phase is meant to determine the child’s verbal skills. It also affords the interviewee practice in responding to questions¹⁵ and might be therapeutic if the child is ready to describe experiences of which he or she might be ashamed of. The interviewer(s) should introduce himself or herself to the child. The introduction should contain the interviewer(s) names and occupations. Law enforcement officers must make it clear to the child that he or she is not in trouble and that the officer’s role is not to arrest the child.¹⁶ The investigator should briefly explain to the

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Poole and Lamb 113; Pence and Wilson *The Team Investigation of Child Sexual Abuse: The Uneasy Alliance* (1994) 53; Samuel and Starks 27; Müller and Hollely *Introducing the child witness* (2000) 287.

¹¹ Aldridge and Wood *Interviewing Children: A Guide for Child Care and Forensic Practitioners* (1998) 107.

¹² Aldridge and Wood 108.

¹³ *Ibid.*

¹⁴ Poole and Lamb 52.

¹⁵ Poole and Lamb 96.

¹⁶ Pence and Wilson 57; Mitnick “The Use of Language in Interviewing Children” 1998 *Finding Words* 6.

child the purpose of the interview and his or her role. Songca,¹⁷ Aldridge and Wood¹⁸ are of the view that with children of all ages, the interviewer should initially spend some time on introductions and “small talk”. This is to establish trust and create a non-threatening situation.¹⁹

It is also essential to determine the child’s sophistication and ability to understand concepts. In particular, the interviewer should determine whether the child can read, write, count, tell time, know colours, birth-dates and knows concepts such as before or after. Moreover, the interviewer should determine the child’s developmental status, age, family composition, knowledge of anatomy and family terminology for genital areas.²⁰

3.2 Phase Two: Questioning

The substantive portion of the interview begins after the rapport phase. The interviewer can transcend into this phase by phrasing his or her questions in one of the following ways:

“Now that I know you a little better, it’s time to talk about something else. Do you know why you are here today?”

“Now that we know each other a little better, I want to talk about the reason that you are here today. Tell me the reason you came to talk with me today.”²¹

It is important at this stage not to mention a particular individual or action and to avoid words such as hurt, bad, abuse or any words that may imply harm.²² There are numerous ways that can be used for raising the topic of abuse without asking a direct question about the sexual activity. The question may be phrased in this manner:

“Who are the people you don’t like to be with?”

“I understand that something may have happened to you. Please tell me everything that happened, every detail, from the very beginning to the very end.”²³

17 *Diagnostic Interviews and the Use of Anatomically Correct Dolls as Methods for Establishing Child Sexual Abuse* (LLM diss 1993 UND) 30.

18 35.

19 It is crucial to the whole interview process for the interviewer to bear in mind the following: He/she has to appear relaxed and not to react with surprise to disclosures of abuse, he/she should avoid touching the child, he/she must not make comments that the child may interpret as selective reinforcement of specific types of questions, not to use the word “pretend” or “imagine”, or other phrases that suggest a fantasy mode. Cf White “The Investigatory Interview with Suspected Victims of Child Sexual Abuse” 1990 *Through the Eyes of a Child* 384.

20 Schlesinger *Sexual Abuse of Children: A Resource Guide and Annotated Bibliography* (1982) 56; Whitcomb, Shapiro and Stellwagen “When the Victim is a Child: Issues for Judges and Prosecutors” *US Department of Justice, National Institute of Justice* (1985).

21 Poole and Lamb 134.

22 *Ibid.*

23 Poole and Lamb 135.

Some interviewers show a preference for open-ended questions.²⁴ Open-ended questions are focused and encourage the child to provide narrative descriptions in their own words. This can be done by using general probes such as:

“Tell me everything you can about that” or

“What’s the very next thing that happened after that?”

Repeating open-ended questions can benefit both the child and the interviewer. Questions may be repeated within an interview or in different interviews.²⁵ The impact of repeated open-ended questions depends on the timing of repetition and the type of questions asked. Repeating questions may be beneficial to the interview because they might elicit new information, delay the loss of memory which occurs naturally over time, and encourage children to engage in memory talk.²⁶

Once the target topic has been raised, interviewers should encourage children to provide narrative descriptions in their own words. Narratives encourage children to relate events in their own words and are regarded as accurate if made in response to open-ended questions.²⁷ For example:²⁸

“Why did I come to see you today?” If no response:

“I understand something happened to you. Tell me about that.” If no response:

“I heard from your counsellor, Ms Mthembu, that maybe you were not safe. Tell me about that.” [The interviewer should wait for a response, if the child mentions an event, the interviewer must prompt for a free narrative.] “It is important for me to understand everything about [name of the alleged perpetrator]. “Tell me everything you can about that.”

3.3 Phase Three: Clarification

The clarification phase gives interviewers an opportunity to get additional details about the event(s), to pursue issues that have special legal relevance and to clarify comments the child made.²⁹ Interviewers have adopted two rules. Firstly, they use the child’s terms for describing various events or body parts. Secondly, they make use of open-ended questions more than directive questions whenever possible.³⁰ Questions may be phrased in the following ways:

24 Poole and Lamb 61; Terr “Anatomically correct dolls: Should they be used as the basis for expert evidence?” 1988 *American Academy of Child and Adolescent Psychiatry* 254.

25 Poole and Lamb 55.

26 *Ibid.*; see also Aldridge and Wood 122.

27 Poole and Lamb 136.

28 *Ibid.*; see also Samuel and Starks 26–29.

29 Poole and Lamb 137.

30 *Ibid.*

3 3 1 Invitation Questions

Invitation questions are prompts for details and context of the event. They may take the form of directives, questions and periods of silence that invite and encourage the child to provide spontaneous narrative. They are based on something the child has already said and they also assess recall memory. They enable the child to provide new information.

3 3 2 Directive Invitations

The interviewer may phrase the questions in this way:

“Tell me what happened, start at the beginning, go to the middle and then to the end. Don’t leave anything out, not even the little things.”

“I want to know everything about how you got to the bedroom.”

3 3 3 Direct or Focused Questions

They are questions related to details already mentioned by the child and are used to clarify and expand the child’s statement. They are designed to access recognition memory. They should be used only after invitations have been exhausted. They can be phrased in this manner:

“You said ‘We were in the kitchen and he touched me and stuff’.”

“Who is ‘he’?”

“Point to the place on your body that uncle Tom touched you.”

3 3 4 Leading Questions

Leading questions should be avoided. Nevertheless, they are not in themselves bad questions. If used they should be paired with open-ended questions. For example:

“Did you see his birthmark?”

“Tell me everything about [name] birthmark.”

“Did daddy do anything like that to you?”

“Tell me everything about what daddy did.”³¹

3 4 Phase four: Closure

Closure is a very important aspect of the interview. The interviewer should end the interview by reverting to neutral topics and thanking the child for his or her co-operation. The investigator should also answer any questions the child might have, and tell the child how to contact him or her in the future.³² The child should also be given as much information as possible as to what will happen next.

31 Terr 1988 *American Academy of Child and Adolescent Psychiatry* 257.

32 Poole and Lamb 97.

4 Corroborating Evidence of the Child's Statements: Ring of Veracity

Professionals dealing with children must gather information that might corroborate the child's allegations. Clause 17³³ makes provision for evidence of surrounding circumstances and the impact of the sexual offence on the complainant. It states:

"Evidence of the surrounding circumstances and impact of any sexual offence upon a complainant may be adduced at criminal proceedings where such offence is tried in order to prove –

- (i) (a) Whether a sexual offence is likely to have been committed . . . towards or in connection with the person concerned;"

This provision therefore allows professionals to gather evidence that may corroborate the child's statements. Corroboration of the child's statements may take various forms such as physical evidence, witnesses, disclosure and covert evidence. This ring of veracity increases the credibility of the child. It circles the "truthful details" that can be proven surrounding the issue.³⁴ For example:

- (a) Medical evidence may be used to corroborate the child's account of events. Statements by the physician should be admissible including evidence relating to the presence of sexually transmitted diseases. A specialised medical examination may also be undertaken. It may reveal the existence of important evidence such as abrasions or bruising of the inner thighs or genitalia, scarring, tears or the disruption of the hymen. It should always be borne in mind however, that the healing of genitalia or anal trauma occurs quickly and often without lasting visual damage. Moreover, an examination cannot usually determine that a child has been sexually abused. Investigators should also look out for semen based on the child's statements. The perpetrator might be required to explain why his semen is in a certain area.
- (b) Witnesses may have seen the complainant and the alleged perpetrator in places that confirm the victim's statements. The investigator should also interview the perpetrator's ex-partners or spouse.

The ring of veracity may take the following form:³⁵

Interviewer: I understand that something happened to you on Saturday.

Child: Yes.

Interviewer: Tell me everything about it.

Child: I was in the living room watching television and daddy came down the stairs and sat on the sofa next to me, pulled down his trousers and made me lick his pee-pee.

Interviewer: Tell me everything about licking daddy's pee-pee.

³³ Sexual Offences Amendment Bill.

³⁴ Samuel and Starks 36.

³⁵ Samuel and Starks 35–36.

Child: He made me lick his pee-pee and something white came out. He then wiped off the white stuff and cleaned his hand on the right side of the sofa. I then heard mama coming down the stairs. She went to the kitchen and opened the freezer. Daddy started tickling me.

Interviewer: How did you know that mama was coming down the stairs?

Child: The stairs are squeaky.

Interviewer: Tell me more about the sofa daddy was sitting on.

Child: It is green and white and big and has a huge red spot.

The interviewer can go to the child's house and verify the above statements, to see if there is indeed a freezer in the kitchen, to check the stairs and interview the child's mother. This can go a long way in corroborating the child's allegations.

5 Obtaining Admissions: A Tool to Ensure a Safe Child and an Accountable Offender

The interview of the alleged perpetrator is essential because the victim might be too young or embarrassed to testify, the crime might have been committed in private, making it impossible to corroborate the victim's statement. These problems may be overcome by obtaining an admission from the alleged perpetrator.³⁶ Samuel and Starks³⁷ are of the view that the alleged offender will initially deny the allegations. It is essential to overcome this and to succeed, the investigator has to understand the levels of denial to obtain an admission of sexual contact. There are three levels of denial, namely:³⁸

(a) Total denial: Usually the perpetrator responds by saying "I wasn't there."

In some instances the alleged offender may down play his or her responsibility, for example:

"I didn't do it and if I did, it was an accident."

"I wasn't aware . . . too drunk . . . asleep."

"Could I have done that and not remembered?"

(b) The second level consists of the perpetrator denying responsibility or arguing that the abuse did not have an impact on the child. It might also be alleged that the child was the actor or another adult caused it.³⁹

"She came to me."

³⁶ Samuel and Starks ³⁹. An admission, unlike a confession, is an acknowledgement of the elements of the crime wrapped up in a justification. See Zeffertt, Paizes and Skeen *The South African Law of Evidence* (2003) 429.

³⁷ 40.

³⁸ *Ibid.*

³⁹ *Ibid.*

"My wife said I was fat and ugly and wouldn't have sex with me."

"It happened because of what happened to me when I was a child."

"I was sharing love."⁴⁰

- (c) In the third level, the offender may admit responsibility, but add a justification.

Examples of justifications created when the offender does not take responsibility are the following:

"Her blouse came down and she didn't pull it up."

"He looked at me 'that way'."

Examples of justifications created when the offender does not acknowledge the impact of his or her actions:

"I was looking to see if she was fooling around."

"I did it, but it is okay because . . ."

"I thought she was my wife."

The interviewer must always remember that the aim of the interview is to obtain an admission. The investigator must ensure that the alleged perpetrator does not go into total denial. In most cases perpetrators convince themselves that they are not at fault, or that the sexual abuse did not hurt the child.⁴¹ The interviewer must therefore talk to the alleged perpetrator, find the excuse for the activity and then get the alleged perpetrator to explain how the activity is not his or her fault.⁴² When this happens, the admission of sexual abuse is also covered and the goal of the interview is met. The interview should be conducted in a non-threatening way in order to enable the alleged offender to admit to the abuse. This style also protects the alleged perpetrator's ego, which at times is to blame for his or her denials. When the alleged offender starts to blame his or her conduct on some event or conduction, the interviewer should help the interviewee to develop or express this justification so that information relating to the offence may be obtained.

Samuel and Starks⁴³ are of the view that the interviewer needs to reach into his or her own mind and change his or her outlook on what the alleged perpetrator is about to say. The interviewer needs to convince the alleged offender that he or she needs help for whatever caused the abuse to happen.

The location of the interview is very important.⁴⁴ The alleged perpetrator's own kitchen is the most appropriate, and the alleged perpetrator might easily succumb to the "help with the problem" approach.

40 This is a typical explanation of a perpetrator who wants to continue to convince the investigator that the abuse had no impact on the child.

41 Samuel and Starks 41.

42 *Ibid.*

43 44.

44 *Ibid.*

The investigator must avoid words that imply guilt or a crime, and must never ask if the sexual abuse occurred, only why it occurred, and it is essential that the subject be adhered to. The interviewer might phrase his or her questions in this way:

“I know this has been bothering you, so I will try to help you so that it doesn’t happen again.”

“We need to talk about this so that it doesn’t happen again, let’s talk about it so that we can get you the help.”

“Did she put her mouth on your penis?”

The interviewer should then ask why it happened or what could have caused it. As the interviewee gives an excuse, it has to be reinforced immediately.

The above examples encourage the alleged perpetrators to accept full responsibility for their behaviour. This is in accordance with the guiding principles set out in Schedule 1.⁴⁵

6 The Rights of the Alleged Perpetrator During the Interview

The rights of the alleged perpetrator remain very important during the entire criminal justice process. The rights of arrested, detained and accused persons are expounded in sections 35(1), 35(2) and 35(3) of the Constitution of the Republic of South Africa.⁴⁶ These rights differ in certain respects and it is therefore very important to distinguish between an arrested, detained and accused person.

Section 35(1) of the Constitution stipulates that only persons who have allegedly committed an offence may be arrested.⁴⁷ It may be argued, on constitutional grounds, that where a person is interviewed, interrogated or detained, he or she acquires the status of an “arrested person”. This problem was addressed by Satchwell J in *S v Sebejan*.⁴⁸ The crucial difference, according to the court, between an arrested person and a suspect is that the latter is unaware of the risk of being charged with a crime. This lack of knowledge on the suspect’s part may cause him or her to act ill-considerately by, for example, making self-incriminating statements which could later be used as evidence against him or her. Satchwell J states⁴⁹ the following:

45 Criminal Law (Sexual Offences) Amendment Bill. It states that a person who commits a sexual offence should be held accountable for his/her actions and should be encouraged to accept full responsibility for his/her behaviour.

46 Act 108 of 1996.

47 Since the concept of “arrest” is not defined in the Constitution, it may well be that it does not carry the same meaning it has under s 39 of the Criminal Procedure Act 51 of 1977.

48 1997 1 SACR 626 (W).

49 *S v Sebejan* 634F-G.

“If the suspect is deprived of the rights which have been afforded to an arrested person then a fair trial is denied a person who was operating within a quicksand of deception while making a statement. The pre-trial procedure is a determinant of trial fairness and is implicit in the Constitution and in our common law. How can a suspect have a fair trial where pre-trial unfairness has been visited upon her by way of deception . . . The temptation should not exist that accused persons, who must *a fortiori* have once been suspects are not advised of rights to silence and to legal representation and never receive meaningful warnings prior to making statements which are subsequently tendered against them in their trials, because it is easier to obtain such statements from them while they are still suspects who do not enjoy constitutional protection.”

Satchwell J thus reached the conclusion that suspects are entitled to the same trial procedures as arrested persons.

An accused person is an individual who has been formally charged with an offence. In *Sanderson v Attorney-General, Eastern Cape*⁵⁰ Kriegler J explains that the term “charged” –

“. . . can be interpreted very narrowly, so as to refer to the formal arraignment or something tantamount thereto, or broadly and imprecisely to signify no more than some or other intimation to the accused of the crime(s) alleged to have been committed.”

Usually arrest is followed by detaining a person and that then results in a formal charge. An individual is thus firstly an arrested person, then a detained person and finally an accused person.⁵¹

As is known, the Constitution affords arrested persons the following rights:

6 1 The Right to Remain Silent⁵²

The right to remain silent stems from the presumption of innocence. The accused’s right to remain silent arises the moment an arrest is executed and the accused is not compelled to assist the prosecution. A court may not later discriminate against an accused because the latter exercised the right to remain silent. Persons suspected of having committed a crime and who are not arrested probably do not enjoy a right to remain silent.

6 2 The Right to be Informed Promptly of the Right to Remain Silent⁵³

The importance of this right is situated in the fact that it affords the arrested person the opportunity to make an informed decision as to whether he would give information to the state or not. The court in *S v Agnew*⁵⁴ found that the right to remain silent could still be infringed after

50 1998 2 SA 38 (CC) par 18.

51 Confirmed by Snyckers in Chaskalson *et al Constitutional Law of South Africa* (1996) ch 27.

52 S 35(1)(a).

53 S 35(1)(b)(i).

54 1996 2 SACR 535 (C).

the arrested person was initially informed about this right. In *S v Agnew*⁵⁵ the police omitted to wait for the arrested person's attorney and the arrested person continued to make a statement to the magistrate. The attorney would have advised his client not to make the statement, had he been present. The statement was thereupon inadmissible in court.

6 3 The Right not to be Compelled to Make any Confession or Admission that could be Used in Evidence against the Person⁵⁶

The most important application of this right is to be found in *S v Zuma*⁵⁷ where the Constitutional Court declared section 217(1)(b)(ii) of the Criminal Procedure Act 51 of 1977⁵⁸ invalid. The court decided that the common law rule that the state must prove beyond reasonable doubt that an admission was made willingly, forms an integral part of the rights entrenched in section 25(1)(c) of the Interim Constitution 200 of 1993.

Although the aim of an interview is to obtain an admission (as discussed in paragraph 5 above), this should always be conducted without infringing this constitutionally entrenched right of the interviewee.

6 4 The Right to be Brought before a Court as Soon as Reasonably Possible⁵⁹

Section 50(1) of the Criminal Procedure Act 51 of 1977 obligates the state to bring an arrested person before a lower court within 48 hours after arrest. This section is thus supported by the Constitution.

7 Conclusion

The Child Justice Bill advocates the meaningful participation of children in criminal or civil proceedings. It states the following:

"Every child capable of participating meaningfully in any judicial or administrative proceedings in a matter concerning that child has the right to participate in an appropriate way in those proceedings. Views expressed by the child must be given due consideration."⁶⁰

Children can participate fully in judicial proceedings if interviews are conducted by trained professionals who are able to ask children appropriate questions. Children can express their views meaningfully if interviewers take cognisance of their cognitive limitations. The fact that the alleged perpetrator also enjoys particular rights, also during the interviewing process, makes the prosecution's task a formidable one. Proper training of interviewers is thus imperative to secure a successful prosecution.

⁵⁵ *S v Agnew* 541 D.

⁵⁶ S 35(1)(c).

⁵⁷ 1995 4 BCLR 401 (CC).

⁵⁸ This subsection placed an onus on the accused to prove, amongst others, that an admission before a magistrate was not made willingly.

⁵⁹ S 35(1)(d).

⁶⁰ S 10.

Clause 11(2) of the Child Justice Bill reiterates children's rights by stipulating that their rights are of paramount importance in all matters that are of concern to them. It is in the child's best interest to be protected from abuse⁶¹ and for the state to bring perpetrators to book. Children's interests will best be protected if adults learn and master the ability to speak and listen properly to children.

⁶¹ S 11*bis*(d).